

AMENDED IN ASSEMBLY MAY 7, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 812

Introduced by Assembly Member Mitchell

February 21, 2013

An act to amend Sections 8257, 8402, 8403, 8406.6, 8406.7, 8406.9, 8407, and 8408 ~~of~~ *of, and to add Section 8401.5 to*, the Education Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

AB 812, as amended, Mitchell. Child care: contracts: termination and suspension.

(1) Existing law requires the State Department of Education to apply sanctions against contracting agencies that have serious licensing violations, as defined and reported by the State Department of Social Services and provide 90 days' written notification to any contractor whose agreement is being terminated, unless there is imminent danger to the health and welfare of children if agency operation is not terminated promptly.

This bill would require a 90-day written notification as specified, except in the case of certain immediate terminations.

(2) Existing law requires the department to provide an independent appeal procedure in certain instances, including, but not limited to, contract termination or suspension, to each contracting agency providing specified child care and development services.

This bill would ~~repeat~~ *delete* the requirement that the department provide ~~an~~ *the* independent appeal procedure, ~~as described above, in~~

~~the instance of~~ for contract suspension. *The bill would additionally require the department to provide an internal appeal procedure to resolve a dispute between the department and a contracting agency providing specified child care and development services regarding the interpretation or application of a contract term or condition, or to dispute the findings of a fiscal or programmatic review.*

(3) Existing law requires the Superintendent of Public Instruction to establish a contract classification system with 3 classes of contract designations; a clear contract, a provisional contract, and a conditional contract, as specified.

This bill would revise the 3 classes of contract designations, as specified.

(4) Existing law authorizes any contracting agency that evidences chronic fiscal or program violations of a felony nature, as specified, to have its contract immediately suspended or terminated provided there is documented evidence of the violations and upon review and recommendation of the general counsel of the department.

This bill would instead authorize a contracting agency that evidences any specified acts or omissions to have its contract or contracts immediately terminated provided there is documented evidence of the acts or omission and upon review and recommendation of the general counsel of the ~~state~~ department. The bill would add additional acts or omissions, as described, that may result in immediate termination of an agency's contract or contracts and require the notice of immediate termination of a contract to be served in a specified manner.

(5) Existing law authorizes a contracting agency that places a person in a position of fiscal responsibility or control who has been convicted of certain crimes to have its contract immediately suspended or terminated if there is documented evidence of the conviction and upon review and recommendation of the general counsel of the department. Existing law authorizes a contracting agency whose contract is terminated for the reasons described above to appeal the contract termination, and require the contract termination to occur after notice, as specified, is provided at least 90 days before termination.

This bill would instead authorize a contracting agency that places a person in a position of fiscal responsibility or control who has been convicted of a crime involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, to have its contract immediately terminated if there is documented evidence of the conviction and upon review and recommendation of the general

counsel of the department. The bill would repeal the authority of a contracting agency whose contract is terminated for the reasons described above to appeal the contract termination, and the requirement that this termination occur after notice, as specified, is provided at least 90 days before termination.

(6) Existing law authorizes local contracting agencies to continue to operate under their contract during an appeal of termination, unless the specified action is based on imminent danger to the health and welfare of children. Existing law requires, if the contract is being terminated based on imminent danger to the health and welfare of children, the reason for the termination to be specified by the department in its notice of termination.

~~This~~

(7) *This* bill would instead authorize local contracting agencies to continue to operate under their contract during an appeal of termination, unless the action is an immediate termination action, as specified, in which case a local contracting agency would not be authorized to continue to operate under the contract after the effective date given in the notice of immediate termination.

This bill would make conforming and nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8257 of the Education Code is amended
2 to read:
3 8257. The department shall do all of the following in
4 administering the provisions of this chapter:
5 (a) Apply sanctions against contracting agencies that have
6 serious licensing violations, as defined and reported by the State
7 Department of Social Services pursuant to Section ~~1544~~ 1597.11
8 of the Health and Safety Code.
9 (b) Except in the case of immediate terminations taken pursuant
10 to Sections 8406.7 or 8406.9, provide 90 days' written notification
11 to any contractor whose agreement is being terminated.
12 Notwithstanding Article 18 (commencing with Section 8400), the
13 department shall establish procedures for placing a contractor
14 whose agreement is being terminated into receivership. Action to

1 initiate receivership shall be at the discretion of the department,
2 and may be taken against a contractor whose agreement is being
3 terminated either immediately or within 90 days. The receiver shall
4 not be a department employee. The receiver shall have sufficient
5 experience in the administration of child care and development
6 programs to ensure compliance with the terms of the receivership.

7 *SEC. 2. Section 8401.5 is added to the Education Code, to*
8 *read:*

9 *8401.5. (a) The department shall provide an internal appeal*
10 *procedure to resolve a dispute between the department and a*
11 *contracting agency providing child care and development services*
12 *pursuant to Section 8262 regarding the interpretation or*
13 *application of a term or condition of a contract, or to dispute a*
14 *finding made by the department resulting from a fiscal or*
15 *programmatic review, including, but not limited to, an error rate*
16 *notification.*

17 *(b) A contracting agency shall have the right to appeal the*
18 *findings of a fiscal or programmatic review, including, but not*
19 *limited to, an error rate finding, by submitting a request for appeal*
20 *in accordance with the internal appeal procedure developed by*
21 *the department pursuant to subdivision (a).*

22 ~~SEC. 2:~~

23 *SEC. 3. Section 8402 of the Education Code is amended to*
24 *read:*

25 *8402. (a) The department shall provide an independent appeal*
26 *procedure to each contracting agency providing child care and*
27 *development services pursuant to Section 8262 that shall be*
28 *conducted by the Office of Administrative Hearings and shall be*
29 *provided upon an appeal petition of the contracting agency in any*
30 *of the following circumstances:*

31 *(1) Termination of a contracting agency's contract.*

32 *(2) Denial of more than 4 percent or twenty-five thousand dollars*
33 *(\$25,000), whichever is less, of a local contracting agency's*
34 *contracted payment for services schedule.*

35 *(3) Demand for remittance of an overpayment of more than 4*
36 *percent or twenty-five thousand dollars (\$25,000), whichever is*
37 *less, of a local contracting agency's annual contract.*

38 *(b) Before filing an appeal petition for an action taken pursuant*
39 *to paragraph (2) or (3) of subdivision (a), the contracting agency*

1 shall have submitted all previously required standard monthly or
2 quarterly reporting forms to the department.

3 ~~SEC. 3.~~

4 *SEC. 4.* Section 8403 of the Education Code is amended to
5 read:

6 8403. All hearings required by ~~Section~~ *Sections 8401.5 and*
7 8402 shall be conducted according to the provisions of the
8 Administrative Procedure Act (Chapter 5 (commencing with
9 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
10 Code), except as otherwise directed in this article.

11 ~~SEC. 4.~~

12 *SEC. 5.* Section 8406.6 of the Education Code is amended to
13 read:

14 8406.6. The Superintendent shall establish a contract
15 classification system for purposes of identifying, monitoring, and
16 providing technical assistance to contractors as follows:

17 (a) Clear contract. This designation shall be given to a contract
18 that is neither a provisional contract, as described in subdivision
19 (b), nor a conditional contract, as described in subdivision (c).

20 (b) Provisional contract. This designation applies to ~~a~~
21 ~~contracting an agency's first contract for any particular service, if~~
22 ~~by an existing contract service or to the contract of an existing~~
23 ~~contracting agency for a new new, modified, or different type of~~
24 ~~service or by a contracting agency that does not have an existing~~
25 ~~contract for services. The time frame~~ *timeframe* of a provisional
26 contract is at the discretion of the department and is given to ensure
27 that the contracting agency can demonstrate fiscal and
28 programmatic compliance before the contract is designated as a
29 clear contract. The contract status shall be reviewed annually.

30 (c) Conditional contract. This designation applies to a high-risk
31 contract awarded to a contracting agency that evidences fiscal or
32 programmatic noncompliance, or both fiscal and programmatic
33 noncompliance. A contracting agency with one or more contracts
34 designated as conditional is deemed to be on conditional status
35 with the department for all child care and development program
36 purposes and is subject to any restrictions deemed reasonable to
37 secure compliance. The conditional contract shall include a bill of
38 particulars detailing the items of noncompliance, the standards
39 that must be met to avoid termination of contract and to qualify
40 the agency for clear contract status, and technical assistance plan.

1 Failure to demonstrate substantive progress toward fiscal or
2 program compliance within six months of that designation shall
3 constitute a breach of contract and may subject the contract to
4 termination for any applicable cause specified in Section 8406.7
5 or 8407, in accordance with Section 8402.

6 (d) Agencies with conditional contracts shall receive technical
7 assistance from the Child Development Division of the department.

8 ~~SEC. 5.~~

9 *SEC. 6.* Section 8406.7 of the Education Code is amended to
10 read:

11 8406.7. (a) A contracting agency that evidences any of the
12 following acts or omissions may have its contract or contracts
13 immediately terminated if there is documented evidence of the
14 acts or omissions, and upon review and recommendation of the
15 general counsel of the department:

- 16 (1) Fraud, or conspiracy to defraud.
- 17 (2) Misuse or misappropriation of state or federal funds,
18 including a violation of Section 8406.9.
- 19 (3) Embezzlement.
- 20 (4) Threats of bodily or other harm to a state official.
- 21 (5) Bribery or attempted bribery of a state official.
- 22 (6) Unsafe or unhealthy physical environment or facility.
- 23 (7) Substantiated abuse or molestation of children.
- 24 (8) Failure to report suspected child abuse or molestation.
- 25 (9) Theft of supplies, equipment, or food.
- 26 (10) Cessation of operations without the permission of the
27 department, or acts or omissions evidencing abandonment of the
28 contract or contracts.
- 29 (11) Failure of a program operating pursuant to Article 3
30 (commencing with Section 8220) or Article 15.5 (commencing
31 with Section 8350) to reimburse a significant number of approved
32 child care providers, as determined by the department, within 15
33 calendar days after the date set in the plan for timely payments to
34 providers adopted by the contracting agency pursuant to Section
35 18226 of Title 5 of the California Code of Regulations, unless the
36 failure is attributable to a delay in receiving apportionments from
37 the state.
- 38 (12) Failure of a program operating pursuant to this chapter to
39 pay salaries owed to employees, pay federal payroll tax, or
40 reimburse a significant number of child care providers, as

1 determined by the department, affiliated with a contracting agency
2 pursuant to Article 8.5 (commencing with Section 8245) for more
3 than 15 days after the employee salaries, federal payroll taxes, or
4 reimbursement payments were due, unless the failure is attributable
5 to a delay in receiving apportionments from the state.

6 (b) An agency whose contract is immediately terminated
7 pursuant to this section retains appeal rights in accordance with
8 Section 8402.

9 (c) Notwithstanding any service provision in the Administrative
10 Procedure Act (Chapter 5 (commencing with Section 11500) of
11 Part 1 of Division 3 of Title 2 of the Government Code), a notice
12 of immediate termination shall be served on the contracting agency
13 by personal service or at the last address on file with the
14 department, by overnight mail or certified mail. Service may be
15 proved in the manner authorized in civil action. Service by mail
16 is complete at the time of deposit.

17 (d) The department shall advise child care and development
18 contractors of the provisions of this section within 30 working
19 days of the effective date of the act amending this section during
20 the 2013–14 Regular Session of the Legislature.

21 ~~SEC. 6.~~

22 *SEC. 7.* Section 8406.9 of the Education Code is amended to
23 read:

24 8406.9. (a) An agency that has in place or places a person in
25 a position of fiscal responsibility or control who has been convicted
26 of a crime involving misuse or misappropriation of state or federal
27 funds, or a state or federal crime involving moral turpitude, may
28 have its contract immediately terminated pursuant to Section
29 8406.7 if there is documented evidence of the conviction, and upon
30 review and recommendation of the general counsel of the
31 department.

32 (b) For purposes of this section, “position of fiscal responsibility
33 or control” includes any authority to direct or control expenditure
34 of, or any access to, state or federal child care and development
35 funds received pursuant to this chapter whether that authority or
36 access is conferred based on the person’s status as an employee,
37 director, manager, board member, or volunteer, or based on any
38 other status.

39 (c) If the agency provides evidence to the department, before
40 the effective date given in the notice of immediate termination,

1 that the convicted person has been removed from the position of
2 fiscal responsibility or control and provides assurance that the
3 person will not be returned to a position of fiscal responsibility or
4 control, the department shall withdraw the termination action.

5 ~~SEC. 7.~~

6 SEC. 8. Section 8407 of the Education Code is amended to
7 read:

8 8407. Except for causes listed in Sections 8406.7 and 8406.9,
9 termination of a child care and development contract shall not
10 occur without good cause and without notice as described in
11 Section 8406 at least 90 days before the effective date given in the
12 notice of termination.

13 ~~SEC. 8.~~

14 SEC. 9. Section 8408 of the Education Code is amended to
15 read:

16 8408. Actions as defined in ~~subdivisions (a) to (e), inclusive,~~
17 *subdivision (a)* of Section 8402 shall remain in effect during the
18 appeal process. However, local contracting agencies may continue
19 to operate under the contract during an appeal of termination,
20 unless the action is an immediate termination action taken pursuant
21 to Section 8406.7 or 8406.9, in which case a contracting agency
22 shall not continue to operate under the contract after the effective
23 date given in the notice of immediate termination.